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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

ANDRE BILODEAU, ROBERT BESSY,
AMBER MCNAB, AND
GREG KILLINGSWORTH, individuals,
on behalf of themselves and all others
similarly situated; and DOES 1
through 100,

Plaintiffs,

v.

CITY OF MEDFORD,

Defendant.

Case No.: 1:21-cv-00766-CL

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO AMEND
COMPLAINT**

RESPONSE

Plaintiffs’ Motion summarizes the basis for amending their complaint, without specificity as to why it is proper, authorized, legally supported, newly discovered, or timely. Defendant does not object to including the two new plaintiffs, Travis Greiner and Rhonda Bjork. However, Plaintiffs failed to state a claim for relief with their references to “unlawful search and seizure” and provided insufficient legal or factual basis for amending under FRCP 15. *See, Liberty Legal Found. v. Nat’l Democratic Party of the USA, Inc.*, 875 F. Supp.2d 791, 803 (W.D. Tenn. 2012), *aff’d*, 575 Fed. Appx. 662 (6th Cir. 2014) (“The Sixth Circuit has held that a motion for leave to amend under Rule 15(a) is governed by Rule 7(b), which states that a motion ‘shall state with particularity the grounds for seeking the order.’ Where a party seeking leave to amend does so ‘in a single sentence without providing grounds or a proposed amended complaint to support’ the request, the Sixth Circuit has held that the party fails to state the grounds for relief with particularity.”)

This Court is aware of the standard required to amend a complaint. *See Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990); *see also Ascon Properties*, 866 F.2d 1149, 1160 (9th Cir. 1989) (including court discretion to deny the motion when amendment is futile). Only a single factor is necessary to justify the denial of leave to amend. *Ascon Properties*, 866 F.2d at 1160. Plaintiffs’ Motion falls far short of the required showing under FRCP 15. Instead, they resort to rumor, unstated changes in the law, and “stories” from non-parties.

Plaintiffs also attempt to utilize “unlawful search and seizure” as a basis for an Eighth Amendment claim. (ECF No. 25-1, p. 3 ¶ 6, p. 26 ¶ 72(g), p. 28 ¶ 85). The proposed factual allegation relates to third-party facilities (¶ 6; ¶ 85), but the legal claim is against Defendant (¶ 72(g)). Plaintiffs failed to state a claim for relief and cited no authority holding that a Fourth

Amendment violation is a separate count of an Eighth Amendment claim. Plaintiffs' attempt to conflate the two should not be allowed.¹ Nor should they be allowed to bring the search and seizure issues belatedly into this case as a basis for class certification, when the deadline for such motion already passed.

CONCLUSION

For the foregoing reasons, Defendant opposes the substantive amendments – aside from including new plaintiffs – based on Plaintiffs' failure to meet the standard required by FRCP 15 and failure to state a claim for relief.

Dated this 29th day of April, 2022.

FROHNMAYER, DEATHERAGE, JAMIESON,
MOORE, ARMOSINO & McGOVERN, PC,

s/ Casey S. Murdock

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¹ The Ninth Circuit in this context found the Eighth Amendment applied to, “place substantive limits on what the government may criminalize.” *Martin v. Boise*, 920 F.3d 484, 615 (9th Cir. 2019). That is a separate issue entirely from whether the government may lawfully search and/or seize property in this circumstance. In other words, it is a secondary consideration and is not a count of an Eighth Amendment claim.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO AMEND COMPLAINT** upon:

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- ☒ by automatic electronic transmission via the Court's Case Management and Electronic Case Filing practice.
- ☐ by mailing to said attorneys a copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorneys at said attorneys' last known address and deposited in the post office at Medford, Oregon, on the date set forth below.

Dated this 29th day of April, 2022.

FROHNMAYER, DEATHERAGE, JAMIESON,
MOORE, ARMOSINO & McGOVERN, P.C.

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